IN THE SUPREME COURT
OF THE UNITED STATES.

No. 496.

CHICKASAW NATION, APPELLANT,

vs.

R. C. WIGGS, ET AL, APPELLEES.

Appeal from the U. S. Court for the Southern Judicial District of the Indian Territory.

MOTION TO DISMISS APPEAL.

Now come the appellees, and move the court to dismiss the appeal in this case for the following reasons, to-wit:

First. This court has no jurisdiction to hear and determine the appeal in this case, because the Act of Congress which conferred jurisdiction upon the United States Court for the Southern District of the Indian Territory to try this case, and

which was in force at the time the judgment herein was rendered in said court, made the decision and judgment of said court final without appeal. The judgment appealed from was rendered in the court below on the 22nd day of December, 1897, and said court finally adjourned for the term on the 26th day of March, 1898, and the law authorizing this appeal was approved July 1st, 1898.

Second. The Act of Congress passed on the 1st day of July, 1898, which authorized an appeal to be taken in this and similar cases is invalid and unconstitutional, because the same is an invasion of the rights and provinces of the Judiciary Department of the Government by the Legislative, because the same disturbs and destroys vested and valuable rights, and deprives the appellees of their property without due process of law.

Third. The appellees further move the court to dismiss this appeal because the Act of Congress approved July 1st, 1898, authorizing the appeal in this and similar cases, if valid for any purpose, only authorized appeals to be taken in cases and upon questions involving the constitutionality and validity of any legislation affecting citizenship or the allottment of lands in the Indian Territory; and the record in this case is not prepared, nor are the questions certified as required by law in appeals of this character.

On the 15th day of August, 1896, Richard C. Wiggs filed an application before the Dawes Commission to be admitted to citizenship in the Chickasaw

Nation. At the same time he filed an application in behalf of his wife, Josie Wiggs, and his daughter, Edna Wiggs.

On the 15th day of November, 1896, the Dawes Commission granted the application of Richard C. Wiggs, and rejected the application made by Richard C. Wiggs for his wife and daughter. Richard C. Wiggs, on behalf of his wife and daughter, appealed from the judgment of the Commission rejecting his wife and daughter, and the Chickasaw Nation appealed from the judgment admitting the said Richard C. Wiggs. These two appeals were united in one case, by agreement, in the United States Court for the Southern District of the Indian Territory, to which court the appeals were taken. The application before the Dawes Commission was made under the Act of Congress approved June 10th, 1896. U. S. Statutes at Large, 1st Session of the 54th Congress. page 399.

On the 22nd day of December, 1897, the case was duly heard upon the Report of the Master in Chancery by the United States Court for the Southern District of the Indian Territory, and all of the applicants were admitted.

Afterwards, and during the next term of the Court, and on the 11th day of July, 1898, the Appellant made application for appeal, and has brought the case to this court by appeal.

Wherefore, Appellees pray that said appeal be dismissed.

C. C. POTTER,

FOR APPELLEES.

BRIEF OF APPELLEES IN SUPPORT OF THEIR MOTION TO DISMISS APPEAL.

On the 10th day of June, 1896, Congress placed a provision in the Indian Appropriation Bill which authorized the Commission to the Five Civilized Tribes to pass upon questions of citizenship in the Indian Territory, and upon questions of membership in said tribe, upon application duly made to said Commission. Said Act further provided that either party might appeal from the decision of said Commission in any such case to the United States Court for the Indian Territory, whose decision in the matter should be final without appeal.

U. S. Statutes-at-Large, 1st session of the 54th Congress, page 339.

On the first day of July, 1898, Congress passed an Act allowing appeals from all cases of citizenship decided by the United States Courts in the Indian Territory, providing that the appeal might be perfected within four months from the passage of the Act in all cases already decided; and in all cases thereafter decided, within sixty days from the date of the judgment. This act was a part of the Indian appropriation bill. and is found on page 591 of the statutes-at-large of 1898. The main question to be discussed is the validity of the act of Congress granting appeals in citizenship cases, when applied to cases decided before the act was passed.

We respectfully submit that congress had no power to change the character of a judgment rendered by a court of competent jurisdiction from a final judgment from which no appeal is allowed, into a judgment not final beyond the power of appeal, or to in any way alter or modify such judgment so as to make it less valuable to the person in whose favor it is rendered, or to make it any less a settlement of the rights of the parties or the matters in controversy. So far as we have been able to ascertain no legislation exactly of this character was ever before attempted by congress. In some of the states legislation similar, or at least analagous, has been attempted, but in every case the same has been held unconstitutional and an unwarranted invasion of the rights and powers of the judiciary by the legislative department of the government.

The case of D. Chastelax vs. Fairchild, 15 Pa. state, page 18, was a case in which the legislature passed a law providing that a new trial should be granted in a certain case already decided, and directing that the case proceed to trial and judgment in the same manner and of like effect as if it had not previously been tried. The Pennsylvania court held this law invalid because it was an attempted exercise of judicial function by the legislature, and used very vigorous language in expressing the opinion of the court upon the subject. The court said, among other things: "The functions of the several parts of the government are severally separated and distinctly assigned to the principal branches of it—the

legislature, the executive and the judiciary—which, within their respective departments, are equal and co-ordinate. When either shall have usurped the powers of one or both of its fellows, then will have been effected a revolution, not in the form of the government, but in its action; then will there be concentration of the powers of the government in a single branch of it, which, whatever may be the form of the constitution, will be despotism, a government of unlimited, irresponsible and arbitrary rule." This statement of the division of the powers of government is universal in its application in this country in both national and state constitutions. The language and the warning of the Pennsylvania court will apply as well to an effort on the part of congress to exercise judicial authority as it would to that of the state legislature.

In Wayman vs. Southard, 6 Curtis, page 327, Chief Justice Marshall stated the familiar formula in reference to the division of the powers of the general government, which has ever since been accepted and a hundred times re-stated. And the division is, of course, the same as stated by the Pennsylvania court.

Mr. Freeman, in his work on judgments, 1st vol., sec. 90, lays down the rule in regard to the exemptions of judgments of courts from legislative interference in this language: "The legislature can not set aside a judgment, and can not authorize any court to set aside a judgment, which had been rendered by it and passed beyond its control before the passage of the act."

In his work on statutory construction, page 628, Mr. Sutherland states the rule as follows: "When a right has been perfected by judgment the fruits of recovery can not be diverted by new legislation, nor can the rights secured by judgment be subjected to new hazard by creating a new right to appeal."

Mr. Black, in his work on judgments, 1st vol., sections 298-9, states the same doctrine, as follows: "The power to open or vacate judgments is essentially judicial. Therefore, on the great constitutional principle of the separation of the powers and functions of the three departments of government, it can not be exercised by the legislature. While a statute may indeed declare what judgments shall *in future* be subject to be vacated, or when or how, or for what causes, it can not apply retrospectively to judgment already rendered and which had become final and unalterable by the court before its passage. Such an act would be unconstitutional and void on two grounds; first, because it would unlawfully impair the fixed and vested rights of the successful litigant; and second, because it would be an unwarranted invasion of the province of the judiciary department."

Smith, in his commentaries on statute and constitutional law, from sec. 347 to sec. 382, ably discusses many phases of this question, and annouuces substantially the same doctrine.

During the civil war the legislature of Arkansas passed a law continuing all cases for the recovery of debt then pending in the courts of that state until

the cessation of hostilities. The Supreme Court, in the case of Burt vs. Williams, 24 Ark., page 90, held this law to be invalid, because an invasion of the rights of the judiciary by the legislature.

The case of Burch vs. Newbury, 10 N. Y. Court of Appeals, page 274, was a case in which the court was considering, among other things, the effect of a statute which was substantially as follows: "An appeal may be taken from any final decree entered upon the single direction of the judge in any suit of equity pending in the Supreme Court on the 1st day of July, 1847, within ninety days from the time this act shall take effect, and such appeals can be taken in the manner provided in sections 327 and 348." The court held the law invalid, and, among other reasons, upon the ground that it deprived the party, who had obtained judgment, of his property without due course of law. The opinion we consider quite a strong one and, while the law, in our judgment, could have been held invalid by a course of reasoning equally as strong on the ground that it was a usurpation of the judicial authority by the legislature, still much of the reasoning is so pertinent to the question under consideration that we beg to quote quite a lengthy extract from the opinion: "The direct effect of the act in question, if valid, is the granting of a new trial or hearing upon all the questions both of law and evidence arising in the case, after it had been lost by the neglect of the complainant under the provision of law as they existed at the time the decree was made. and after it had become final upon the rights of the parties involved in the suit, and the

defendant had acquired possession of the fruits of the litigation by due execution upon it. If the act is not invalid upon the principles which I have endeavored to state, as I think it is, it seems to me that it is contrary to the clause in article 1, section 6, of the constitution of this state, which provides that 'no person shall be deprived of life, liberty or property without due process of law.' The act assumes to create the means by which the complainant may open the decree for a reconsideration and adjudication upon the merits in controversy in the suit between the parties, irrespective of the present decree, substantially by another court having power to alter, modify or reverse the decree and to make a new decree adjudging money to be paid by the defendant to the complainant. In such an event, the money adjudged to and obtained by the defendant under the existing decree, would be taken from him and returned to the complainant, and the means provided by which—upon the contingency, that the appellate court shall come to a contrary conclusion upon the merits of the controversy from that which the court, pronouncing the decree, came—it might and would be done. It is in effect doing more than merely annulling a complete and final decree, by which property has been acquired and possessed. Contingently, it not only deprives such person of the property thus acquired, but compels him to pay to his adversary such sum of money as the appellate court may determine he ought to pay. That the money adjudged to be paid by the decree and received by the defendant under it, was his property in a legal sense, at

the time of the passing of the act, can not admit of any doubt; he owned, had a legal title to it, and was in possession of it. It is true the act does not absolutely deprive the defendant of the money decreed to him, but it does so contingently in effect. I think the provision contained in the constitution referred to, secures a person against being deprived of his property, either contingently or absolutely. If the appeal authorized to be taken by the act may result in depriving the defendant of his property, it is in my opinion, contrary to the constitution."

In the case of Skinner vs. Holt, 69 N. W., 595, the Supreme Court of South Dakota held that where, after an appeal had been taken from a judgment of the court decreeing that the proceeds of a life insurance policy were assets of the estate for the partial payment of the debts of the estate, the legislature enacted a law providing that the proceeds of insurance policies, whether theretofore or thereafter issued, shall, to the amount of $5,000, inure to the separate use of the widow, husband or minor children, independently of the creditors, such act of the legislature, if held to affect the rights of creditors to the proceeds of the policy upon which the decree was based, was invalid, because the same would deprive unreversed judgments of the elements of conclusiveness, intrench upon the principle which separates the legislative and judicial powers, and in effect amounts to a reversal of the judgment by the legislature.

In the case of Davis et al vs. the Village of Menasha et al, 21 Wis., 497, the Supreme Court of Wisconsin had under consideration a question almost exactly like this one. The legislature had passed an act which authorized courts to re-open judgments after the time allowed by law for appeals, in existence at the time the judgment was rendered, had expired, when such failure to appeal had been caused by the death of the judge. The law was intended to apply to cases that had been tried within three years before its passage, as well as to those thereafter to be tried. The court held the law unconstitutional and invalid upon two grounds; first, that it disturbed vested rights settled by the judgment; second, that it was a clear invasion of the rights of the judiciary by the legislative department of the government. The reasoning in this case is strong and very pertinent to the question under discussion. We invite the court's attention to it.

In the case of Atkinson vs. Dunlap, 50 Me., 111, the Supreme Court of Maine was considering almost the exact questions we have here, and the court announced its conclusion as follows: "That the legislature has constitutional jurisdiction over remedies is a proposition not to be controverted; but after all existing remedies have been exhausted, and rights have become permanently vested, by judgment, all further interference is prohibited."

In the case of Taylor vs. Place, 4 R. I., 324, the Supreme Court of Rhode Island were discussing a case in which the legislature had, by joint resolution,

attempted to direct that a verdict and judgment rendered in a judicial proceeding should be set aside and a new trial granted. The court, in a very elaborate and able opinion, discusses many features of the questions now under consideration, and the dividing line between the judicial and legislative authority is well drawn and strongly stated. Of course the attempted action of the legislature was held void and unconstitutional. We invite the attention of the court to this case.

In the case of Martin vs. South Salem Land Company, 26 S. E., 591, the Supreme Court of Virginia laid down the doctrine that when litigation has proceeded to a judgment which settles a controversy on the merits, it is beyond the power of the legislature to alter or control.

Roberts vs. the State, 51 N. Y. S., 691, is a case where Roberts had been convicted for burglary by a court of competent jurisdiction, from which no appeal had been taken. Roberts having served two years of his sentence, was then pardoned. Afterwards, an act was passed by the legislature authorizing him to present a claim to the board of claims for damages sustained by him by reason of improper conviction and imprisonment, and authorizing the board to award such damages. In this case the court held that if the effect of the statute was to invalidate the judgment, the statute was void, because the same was an exercise of judicial functions.

In March, 1895, the legislature of Utah passed an act which provided that in all cases involving the rights of polygamous children which had been de-

termined adversely to said children prior to the passage of said act, a motion for a rehearing should be entered on their application filed within a year after the passage of the act. In re Handly's Estate, 49, p. 829, the Supreme Court of Utah held this act invalid because the same assumes a control over the judiciary by the legislature which is not warranted by the constitution.

In Dash vs. Van Kleek, 7 Johns, 477, the court says that the legislature undoubtedly has no power to annul an existing judgment, because there immediately arises a contract against the party adjudged to pay the same in favor of him to whom it is awarded.

There is no doubt but if legislation of this character had been passed by any state legislature it would have been clearly invalid, because, if for no other reason, it is violative of that provision of the constitution of the United States which prevents a state from passing any law impairing the obligation of contracts, and this is the reason generally assigned by the courts for holding such legislation void. This has been repeatedly decided, and the expression of the courts has been uniform without exception, so far as we know. Such legislation, if attempted by a state, would also be invalid because contrary to the ~~fifteenth~~ 14th amendment of the constitution of the United States, because it deprives a citizen of his property without due process of law, and a state can not do this. But it is claimed that there is nothing in the constitution of the United States that prevents Con-

gress from depriving a citizen of his property without due course of law, nor that prevents it from disturbing vested rights or impairing the obligation of contracts. It may be true that there is no express denial of authority, and yet Congress has no constitutional power to pass such a law. We know it to be a fact that this court has frequently in opinions referred to the doctrine of vested rights as though it applied to congressional legislation. We have some cases before us where this subject was referred to—the case of Norris vs. Crocker, 19 Curtis, page 575—in which the plaintiff had sued the defendant to recover of him a penalty provided by act of Congress for the unlawful detention of a slave. Pending the suit Congress repealed the law which authorized such recovery. The court held the repealing law valid, and that it took away the plaintiff's right, the court holding that he had no *vested* right in the penalty, clearly implying that if the plaintiff's right to the penalty had become vested, that a law depriving him of it would be considered invalid.

Also, in the case of Bernard Sampeyreac, et al, vs. United States, 10 Curtis, page 458: Congress passed a law authorizing the review of decrees rendered by the Supreme Court of the Territory of Arkansas, where they had been obtained by forgery and fraud. The validity of this act was attacked on the ground that it disturbed vested rights. The court met the argument by stating that the plaintiff in the case was a fictitious person and could have no

vested rights in the judgment, and the court expressly says that if the party who obtained the decree, sought to be reviewed, was a real and not a fictitious person, the question would be different. It never occurred to the court that Congress had any power to disturb vested rights, and the tenor of the entire opinion indicates that the court was of the opinion that Congress possessed no such power.

Chancellor Kent, speaking on this subject, uses this language: "That the retrospective statute affecting and changing vested rights is very generally considered in this country as founded on unconstitutional principles and consequently inoperative and void. This doctrine, however, is not understood to apply to remedial statutes, which may be of a retrospective nature, provided they do not impair contracts or disturb absolutely vested rights, and only go to confirm rights already existing, and in furtherance of the remedy and adding to the means of enforcing existing obligations. I can not assent to the doctrine supposed to be advanced in Butler vs. Palmer, 1st Hill, 324, that the legislature has unlimited power to interfere with vested rights, unless they be saved by some restriction to be found in the federal or state constitution." (1 Kent Com.. 455, sec. 20.)

It may well be contended that the ruthless disturbance of long vested rights by an act of Congress and the taking and destroying of the property of the citizen without compensation or even notice, by legislation, is so totally un-American, is so shocking to every sense of justice, that it never was the intention

of the framers of the constitution to confer any such power upon Congress, unless it be in extreme emergencies where the general welfare would demand the sacrifice of private rights to public good. It is clear that the framers of the constitution regarded such legislation as wrong, oppressive and immoral, and subversive of that justice which the constitution was intended, by them, to establish, for they deprived the states of the authority to pass such legislation, and it can hardly be contended that it was the intention of the makers of the constitution to confer by implication such power upon Congress.

But, whatever may be the right or power of Congress to disturb and destroy vested rights, it certainly has no power to disturb the final judgments of the courts. We realize to its full extent the doctrine that the remedy always is in the power of the legislature, and that remedies may be changed at the will of the legislature so the right is not destroyed, until the proceeding is perfected into judgment. But then the power to affect it by law ceases, and a very different question arises—should legislation be attempted which affects judgments or rights settled or acquired by them? Remedies can only be made to apply to existing or future litigation. Concluded litigation can not be reached or affected by new remedies. To permit the legislature under the disguise of *remedy* to re-open a final judgment either in the court where rendered or in an appellate court, would be both a perversion of language and of well known rules of law.

Salters vs. Tobias, 3 page (N. Y.), 338.

Dash vs. Van Kleek, 7 Johns, 477.

23 Am. & Eng. Encyclopædia, bottom page 450-2.

Cooley on Constitutional Limitation, 361 to 364.

1 Black on Judgments, 297-8-9.

McCabe vs. Emerson, 18 Pa. St., 111.

Burch vs. Newbury, 10 N. Y., 374.

Pront vs. Barry, 2 Gill (Md.), 145.

Ratcliff vs. Anderson, 31 Gratt (Va.), 105.

Taylor vs. Place, 4 R. I., 324.

3 Am. & Eng. Encyclopædia, bottom page 682-3-7. and

Pennsylvania vs. Bridge Co., 18 Howard, 421.

We further concede that this court has repeatedly held that no litigant has such a vested right in the right to appeal that it may not be taken away from him by act of Congress, that is, that where the jurisdiction of the court rests upon a statute and pending the suit on appeal, the jurisdiction of the court is taken away by repeal of the statute, that the court loses its jurisdiction and the proceeding must

abate. Such is understood to be the rule in Ex-parte McCarty, 7 Wallace, 506; Ins. Co. vs. Ritchie, 5 Wallace, 541; Railroad Company vs. Grant, 98 N. S., 398, and other cases. But these cases fall far short of going far enough to establish the doctrine that Congress could interfere with the final judgment of a court, either by authorizing a new trial or an appeal.

These cases proceed upon the theory that the jurisdiction of the court resting upon statute, the repeal of the statute left the court without any jurisdiction as to future or even pending cases. The state courts have generally held that pending litigation could not be affected by such repeal of a statute which conferred jurisdiction; and it strikes us that this is the wiser rule. But this doctrine, however extreme it may be, does not militate against our position, because, no court has ever held that the repeal of a law which conferred jurisdiction upon courts to pass upon a certain class of cases, could in any manner affect a judgment already rendered by said court in such a case; and to make the above cases an authority against our contention in this case, it would be necessary for them to go to this extent. Suppose that in any of the cases above referred to the new law had not only repealed the old law, but had provided that all judgments theretofore rendered thereunder by the courts should be void or should be set aside upon motion, or in any other manner be annulled. Would it be contended that any court in christendom would hold that such legislation was valid as to concluded litigation?

Neither does the case of Bernard Sampeyreac, et al, vs. the United States, supra, constitute any authority for congressional interference with final judgments. In that case the superior court of the Territory of Arkansas had rendered a judgment for land in favor of a fictitious person, the judgment being obtained by forgery and perjury. The time for appeal under existing laws had elapsed. There being so much scandal growing out of so many judgments of this character being rendered by the superior court of the Territory of Arkansas that Congress passed an act extending the right to appeal in cases where the judgment had been obtained by perjury and forgery, and was therefore void, for another year, thereby allowing the government in this case to appeal. The question of the unwarranted invasion of the judiciary by Congress was not made in the case, and the point mainly relied upon by the defendant in error was that rights had vested under the judgment, and could not be disturbed. This argument was completely answered by showing that the judgment was void from the beginning, and that the plaintiff was a fictitious person. Indeed, the act of congress extending the time for an appeal or review expressly only applied to void judgments, and not to valid ones. Equity would have relieved against such judgment without the aid of the law.

Nor is the case of the United States vs. Grant, 110 U. S., 225, any authority for such legislation. That was a suit in which the government was a party. Upon the petition of the plaintiff the de-

fendant, by an act of its legislature, consented to a partial revision or review of the judgment by the court which rendered it.

This court has not hesitated, on numerous occasions, to resent the attempted exercise of judicial power by Congress. In the case of the United States vs. Klien, 13 Wallace, 128, the court had under consideration an act of Congress which attempted to direct what construction and effect should be given by the courts to pardons issued by the President in cases then pending. The court in strong terms denounced the act as an invasion of the rights of the judiciary by Congress, and held the law unconstitutional.

In the case of the Justices vs. Murray, 9 Howard, 274, this court had a question somewhat similar before it to the one now under consideration. The two questions involved were stated by the court as follows:

First. Whether or not the act of Congress of March 3d, 1863, providing for the removal of the cause after judgment by State Court to Circuit Court of the United States for a new trial, is an act in pursuance of the constitution of the United States.

Second. Whether or not the provision in the seventh amendment of the constitution of the United States which declares that no fact tried by a jury shall be otherwise re-examined, etc., etc.

The court in an opinion by Justice Nelson held the act of Congress invalid upon the latter ground, expressly declining to decide the question raised by the first ground, indicating thereby that the question raised by the first ground was regarded by the court as a serious one, which the court did not want to take the responsibility of deciding until an actual necessity for such decision should arise.

This court had under consideration this question in the case of the State of Pennsylvania vs. Wheeling & Belmont Bridge Company, 18 Howard, page 421, and used the following language: "But it is urged that the act of congress can not have the effect and operation to annul the judgment of the court already rendered, or the rights determined thereby in favor of the plaintiff. This, as a general proposition, is certainly not to be denied, especially as it is respects adjudication upon the private rights of parties. When they have passed into judgment the right becomes absolute, and it is the duty of the court to enforce it." Again, "Now, we agree, if the remedy in this case had been an action at law, and a judgment rendered in favor of the plaintiff for damages, the right to these would have passed beyond the reach of the power of Congress. It would have depended, not upon the public right of the free navigation of the river, but upon the judgment of the court. The decree before us, so far as it respects the costs adjudged, stands upon the same principles, and is unaffected by the subsequent law."

If we should concede, which we do not, that Congress has the power to disturb vested rights whenever in its wisdom it sees proper, we insist that this authority would not warrant Congress in invading the province of the judiciary and disturbing by either special or general law the final judgments of courts. In this case the plaintiff obtained the judgment of a court of competent jurisdiction establishing his right to certain valuable property and privileges. The judgment was self-executing—that is, the appellees could enter upon the enjoyment of all rights secured to them by it without any process from the court or the aid of any officer. After they had entered into the possession of this property and into the enjoyment of these rights, Congress, by an enactment, forces them into another court, forces them to re-try all the issues of both law and fact which had once been finally tried and determined in their favor. Congress unsettles that which had been settled, dis-establishes that which had been established, destroys the title to appellees' property and involves them again in hazardous and expensive litigation. Congress compels the judge of the court which tried the case below to grant an appeal, to approve an appeal bond, to issue citation, to approve a bill of exceptions. Congress had as well have directed the judge to grant a new trial and re-try the case again in that court, or direct the court what judgment to enter. What would be the difference in granting new trial in the court below and in granting one, by means of an appeal, in the appellate court? What is the difference in directing the court to grant

a new trial and in directing it to grant an appeal that must result in a new trial in the court appealed to, if nothing more? In the language of the court in Newbury vs. Burk, Congress has *contingently* deprived the plaintiff of these valuable property rights, because he has been forced to the hazard of another trial in another court that may reverse or modify the decree obtained by the plaintiff in the court below. The character of the judgment rendered by the court below has been changed by an act of Congress. Its final and conclusive effect has been destroyed—the elements of finality and conclusiveness, which are the soul and life of a judgment, have been destroyed. It is now a judgment open to review, subject to be reversed, when, at the date of its rendition and for many months afterwards, it had all the characteristics and effect of a final judgment from which no appeal could be granted, and which fixed and determined finally and for good the rights of the parties. And if Congress can destroy the effect of the judgment to this extent, why can it not destroy the judgment entirely? May we make the further inquiry, why, if the judgment rendered by the United States Courts for the Indian Territory in citizenship cases can be appealed from and reviewed by the authority of an act of Congress passed long after the renditions of said judgments, may not the judgments of every United States Circuit Court, or the Circuit Court of Appeals, be appealed from and reviewed after the time fixed by law for such appeals has expired? And if Congress can authorize such an appeal, why can it not provide that the unsuccessful party may have a

new trial in the same court if he applies therefor within four months from the passage of the act? In fact, if Congress can destroy the final character and conclusive effect of the judgments of these courts, why can it not do so of any court in the land? If Congress can grant the right to appeal three or six months after a judgment has become final, why can not it do so three or six years after judgments have become final? This is not a question of policy; it is one of law, it is one of constitutional authority. If the act of Congress allowing these appeals is valid, then no judgment of a court inferior to the Supreme Court is safe or sacred from congressional interference. The best considered opinions, in this way, may be re-opened to adjudication. Long and well established rights resting upon the supposed inviolability of judicial decision may be re-opened to investigation and further hazard. We refuse to believe that power so dangerous rests with any branch of this government. We are unwilling to accept as sound a doctrine so fraught with evil, a rule of construction so liable to abuse. When Congress has created a court and conferred upon it certain jurisdiction; when it has prescribed the character of its judgments; when the court has proceeded under this law, and within its authority, to a final decision, that is the end of the matter in this country.

This discussion has proceeded upon the theory that the rights secured to the Appellees by the judgment of the court below were valuable rights,

that it involved an adjudication and settlement of their title to property. We take the liberty of here stating what are the property rights held by and appertaining to the members of the Chickasaw tribe of Indians. By virtue of the treaty of 1855, between the United States and the Choctaw and Chickasaw Indians, the United States grants and secures to the members of the Chickasaw tribe of Indians in common, and for their use, occupation and enjoyment, a large district of country. After describing the boundaries of the land set apart to the Choctaw and Chickasaw Indians by the treaty above alluded to, the first article thereof continues: "And pursuant to an act of Congress, approved May 30th, 1830, the United States do hereby forever secure and guaranty the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal undivided interest in the whole." The above is the treaty grant and guaranty of the United States government. A patent was also issued to said land, which contained substantially the same provisions. It thus appears from both the patent and the treaty that each member of the Chickasaw tribe of Indians has an equal right to the possession, use and enjoyment of this land with every other member of the tribe. It is a vast tenancy in common, and whenever the appellee and his family were adjudged by the court below to be members of this tribe of Indians and entitled to all the rights and privileges of such membership, it was in effect ad-

judging that they were tenants in common and should be let into the immediate and common enjoyment, with other members of the tribe, of this valuable property. These were the property rights involved in this litigation. These were the rights and titles that were adjudged and settled by the court below. These are the rights and titles vested in the appellee and his family by virtue of the judgment appealed from, and these are the rights and privileges upon the enjoyment of which they had entered when, by an act of Congress, their title was destroyed, and they were compelled to go to another tribunal and there compelled again to vindicate their right to citizenship and possession of the property. What Congress may next do in reference to these sacred rights and interests, no man *knoweth*.

It is a matter of common information that after the rendition of these judgments (for it is also a matter of common information that there are about sixty-five of these cases from the Chickasaw Nation, involving the rights of about six hundred persons), that many of these people, placing the usual faith and credit to which judicial decrees are considered entitled in this country, in the judgments rendered in their favor, materially changed their condition before the act granting the right to appeal had been passed. Their rights had long been disputed by the Chickasaw Nation, a cloud had rested on their title, and the uncertainty born of such condition had paralyzed their energies, dimmed their hopes and destroyed their confidence; but when finally a court had

been opened to them, promising a fair decision upon their claims, and the court had been appealed to, and a final judgment, after a full hearing of the merits, had been rendered in their favor, their doubts were dispelled, the uncertainty was swept away; their hopes were brightened, and they felt a new and greater interest in the country, and began at once to establish for themselves and their families permanent and comfortable homes; but before the new house had been completed, and when the new plans for the future had just begun to be realized, this act of Congress steps in the way, and all is again doubt and confusion, and these people feel almost like they had been ensnared by the laws of their own country. When they asked for bread they were given a stone. This *actual* and not overdrawn or imaginary condition of the situation of many worthy citizens furnishes a striking object lesson of the evils that will, and do, inevitably spring from the vicious rule of permitting the final judgments of courts to be disturbed by subsequent legislation.

If a judgment obtained, in all particulars, according to the laws of Congress in force at the time such judgment is rendered, and the same is expressly made final by the very terms of the law which authorized the proceeding, is not secure from subsequent legislative interference, we would like to know what confidence can be reposed in the judgments of the courts. To establish a rule to this effect would be to hold that the judgments of all courts inferior to the Supreme Court of the United States hang

upon the caprice of Congress. It might at its pleasure confer the right of appeal in all cases where such appeal is now denied; and in cases where it is allowed within a limited time, Congress might repeatedly and indefinitely extend the time, and might give to such enactment a retroactive application, until there would be no end to litigation or confusion. And this monstrous doctrine, fraught with so much evil, without constitutional or judicial authority to sustain it, must, we think, be established by this court in order to sustain the appeal in this case.

We come now to discuss the third grounds of our motion. The record in this case was prepared with a view and in accordance with the rules observed in bringing up the entire case of both questions of law and fact for review on appeal by this court. Our contention is that if the law of 1898 is valid for any purpose and could apply to judgments rendered prior to its passage in any way, it only authorized an appeal to the Supreme Court in cases *involving the constitutionality of any legislation affecting citizenship or the allottment of lands in the Indian Territory,* in the language of the act itself. The appellant raises in this record the question of jurisdiction of the United States Court for the Indian Territory to try this case; and the alleged want of jurisdiction is based upon the invalidity or unconstitutionality of the law authorizing such court to take jurisdiction of and decide such cases. If this court can only review this constitutional or jurisdictional question, then this appeal should be dismissed because the record is not prepared as required

by law for such appeals. The act of March 3rd, 1891, establishing the Circuit Court of Appeals and regulating and defining in certain cases the jurisdiction of the courts of the United States, provides, in section five (5) that appeals or writs of error may be taken from the existing District and Circuit Courts direct to the Supreme Court in the following cases, among others:

"In any case in which the jurisdiction is in issue. In such cases the question of jurisdiction alone should be certified to the Supreme Court from the court below for decision."

Also "In any case in which the constitutionality of any law of the United States is drawn into question."

While this case does ~~not~~ involve the constitutionality of a law, and, if that was all it involved, it might be that the very question would not have to be certified to the Supreme Court, as required by the act of March 3d, 1891, but, as above stated, it involves a question of jurisdiction of the court trying the case, and it is the question of jurisdiction that brings up the question of the validity of the law. The two questions are inseparable, and one can not be passed upon without at the same time deciding the other. Hence, we are of opinion that if the act of 1898 only authorized appeals to this court involving the constitutionality or validity of any legislation affecting citizenship or the allottment of lands in the Indian Territory, and that question being raised in this record as one affecting the jurisdiction of the court,

that the appeal should be taken and perfected in accordance with the first clause of section five (5) of the act of the 3d of March, 1891, above referred to; and the very question of jurisdiction involved should alone have been certified to the Supreme Court. And that not being done, the appeal should be dismissed on motion. It occurs to us that the correctness of our contention can not be disputed if we are correct in our construction of the act of 1898, authorizing appeals to be taken in this class of cases. We confess that the language in which this law is expressed is somewhat involved and the meaning to some extent obscured, and, standing alone, the meaning might be doubtful; but when we consider other laws and regulations bearing upon the subject of appeal from the District and Circuit Courts to the Supreme Court and from the District and Circuit Courts to the Circuit Court of Appeals, we think the meaning of Congress is clear. Under existing laws at the time the act in question was passed, appeals from the District and Circuit Courts could only be taken to the Supreme Court in certain enumerated cases, among others those involving the jurisdiction of the court and those involving the constitutionality of any legislation. All other cases that were appealable, at all, were to be appealed from the District and Circuit Courts to the Circuit Court of Appeals. No reason is assigned in the law for a change of this universal rule and regulation as to this particular class of cases, nor do we think that any reason can be found in the nature of the litigation itself, or in any fact connected with its history that would fur-

nish an excuse for making an exception in this class of cases. We think it much more reasonable to suppose that Congress intended for these appeals to be taken in accordance with existing laws, and only constitutional and jurisdictional questions should be brought to this court for review, than that Congress intended to burden this court with the review of all the questions of both law and fact involved in so large a number of cases, thereby ignoring the circuit Court of Appeals of the Eighth district and defeating, to this extent, the very purpose of its creation. Besides, the law itself provides that the appeal shall be taken *"under the rules and regulations governing appeals to said court in other cases."* Can not this provision of the act well be held to mean that only such questions can be appealed to and reviewed by the Supreme Court in these cases as are authorized to be appealed to and reviewed by it in other cases. In other words, does not this provision apply to the questions and issues which can be appealed, as well as to the method of procedure? We are quite confident that when this provision, in the act of 1898, is read in the light of existing laws that its true meaning is to authorize appeals from the United States courts for the Indian Territory direct to the Supreme Court, only in cases involving the validity of legislation affecting the question of citizenship and the allottments of land. It will of course be borne in mind that the act of March 3d, 1891, in section 13, provides that writs of error and appeals may be taken and prosecuted from the decisions of the United States courts in the In-

dian Territory to the Supreme Court of the United States or to the Circuit Court of Appeals in the Eighth circuit in the same manner and under the same regulations as from the Circuit or District Courts of the United States under the said act. We beg to further suggest that the act of 1898 very clearly indicates a purpose on the part of Congress to make as little change in the ordinary method of procedure in reference to appeals as could be done consistent with the purposes of the act. The only change necessary to be made to carry out the purposes of the act was to authorize appeals and limit the time in which they should be taken; and, other than this, we think it was clearly the intention of Congress that other laws and rules bearing upon appeals from District and Circut Courts to the Supreme Court should apply. Besides, it is hardly possible that Congress would think a disputed question of fact as to the right of citizenship growing out of the question of marriage, blood, residence and relationship was of sufficient importance and of such vital interest to the welfare of society or either of the litigants as would justify it in burdening this tribunal with the investigation and decision of such a question. Upon the other hand, the constitutional right of Congress to interfere in the affairs of the Indians, and create tribunals to decide questions of citizenship and to provide for the allottment of lands in severalty which had long been held in common by these Tribes, was a question of national importance; and it is a well known fact of current history that such power on the part of Con-

gress was being denied by these Tribes, and it was nothing but proper that Congress should provide a method for getting the question before the highest tribunal in the land. And we are constrained to think that this was the sole purpose of the Act in question

All of which is respectfully submitted, and we request that this motion be sustained, and that the appeal be dismissed.

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